

(1994) 01 NCDRC CK 0031

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

S.S.KAHLON

APPELLANT

Vs

BAWA HOSPITAL

RESPONDENT

Date of Decision: Jan. 10, 1994**Citation:** 1994 1 CPR 286 : 1994 3 CPJ 286**Hon'ble Judges:** S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.**Final Decision:** Complaint dismissed

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986 (for short the "Act") filed by the complainants against the opposite parties on account of the negligence and carelessness of Dr. P.S. Bakshi and his colleagues while performing operation for removal of gall bladder of Smt. Barindra Kahlon.

2. AFTER perusing the complaint, we thought it proper to hear the complainants as regards the maintainability of the complaint under the Act before the State Commission. The core of the matter herein is, "whether the complainants are the "consumers", as defined in the Act". The facts may be noticed with utmost brevity relevant to the said issue. Bawa Hospital, Jalandhar claims to be an Institution owned by the family of late Dr. H.S.Bawa, which is being run by Mrs. H.S. Bawa, Dr. Sabina Bakshi, daughter of Dr. H.S. Bawa and Dr. P.S. Bakshi, son-in-law of Dr. H.S. Bawa. It is alleged that in the month of April, 1993, Smt. Barindra Kahlon deceased who was a resident of Chandigarh read in "The Tribune" and advertisement published by Bawa Hospital, Jalandhar, wherein it was mentioned that they were specialists and leading most experts of Laparoscopic surgery which meant that they were experts in operation of gall bladder and she felt tempted to under operation for removal of her gall bladder from this hospital. The case of S.S.

Khalon complainant is that he talked to his brother-in-law, Dr. Lakhmir Singh, who recently retired from Punjab Government service that Smt. Barindra Kahlon wanted to get herself operated to remove her gall bladder from Bawa Hospital, Jalandhar. According to the complainant, Dr. Lakhmir Singh consulted Mrs. H.S. Bawa and Dr. P.S. Bakshi and informed him that Bawa Hospital would charge Rs. 7,000/-for the operation excluding the expenses of medicines etc. and 30-4-1993 was the date fixed for the operation of Smt. Barindra Kahlon. The case of the complainant is that Smt. Barindra Kahlon was thoroughly checked by the Doctors of Bawa Hospital on 28-4-1993 and on the following day, she was admitted in the hospital and that on 30-4-1993 at 7-15 a.m., she was operated for the removal of her gall bladder. It is stated that gall bladder was shown to complainant-1 and Dr. Lakhmir Singh. It is alleged that at about 9-30 a.m. Smt. Barindra Kahlon regained a little bit consciousness and complained of acute pain in her abdomen and at about 11 a.m., Dr. P.S. Bakshi checked the patient and found a pool of blood on the sheet on which she was lying in the recovery room and about 15/20 minutes thereafter, the patient was removed to the operation theatre. It is further alleged that at about 3 p.m., the patient was brought out from the operation theatre and taken to the recovery room where she expired at about 3-30 p.m. Omnibus allegations of negligence against the Doctors and the attending staff of the hospital had been levelled which according to the complainants led to the expiry of Smt. Barindra Kahlon. A grievance was made that Smt. Barindra Kahlon had expired as a result of deficiency in the performance of operation. The complainants have prayed that they may be awarded Rs. 19,20,000/- along with interest @ 18% p.a. on account of loss suffered by them due to the untimely demise of Smt. Barindra Kahlon and other ancillary reliefs as detailed in paragraph-14 of the complaint. The complainants in support of their case relied on the documentary evidence Annexures C1 to C6 to the complaint.

On notices being issued, the opposite-parties have stoutly controverted the allegations of the complainants and firmly taken up the preliminary plea that the complainants do not come within the ambit of the "consumer", because the operation performed on Smt. Barindra Kahlon deceased was gratuitous. It is pleaded that Dr. Lakhmir Singh was PCMS and had retired from the Punjab Government service. He had approached Smt. Gurdarshan Kaur, widow of Dr. H.S. Bawa and told her that his sister Smt. Barindra Kahlon would like to be operated for the removal of her gall bladder from Bawa Hospital and also represented that he being a colleague and family friend of late Dr. H.S. Bawa, the operation should be carried out free of any charge. The firm plea of the opposite-parties is that considering the request of Dr. Lakhmir Singh, the opposite-parties agreed to perform the operation free of charge and thus absolutely no charges were taken from the complainants and that consequently the complaint does not come within the ambit of "consumer" as defined in the Act. On merits, the allegations of negligence against the Doctors and the attending staff are categorically denied and it is stated that Bawa Hospital is a reputed Institution with an impeccable record of service to its patients. It is alleged that the complaint has been filed simply to blackmail the hospital and its Doctors.

The affidavits of Dr. Lakhmir Singh and that of Smt. Gurlal Kaur, Ajit Singh Mehta, Hakam Singh Panjeta, Mrs. Kamlesh Sodhi, Smt. Lajo, Harbhajan Kaur and S.S. Kahlon were adduced by the complainants as testimony alongwith the supplementary documents C-7 to C-19. The complainants also filed replication to the written statement filed by the opposite-parties reiterating the averments made in their complaint. In rebuttal, the opposite-parties placed on record the documentary evidence R-I to R-10, which is not under challenge. By way of testimony, the affidavits of Mrs. Gurdarshan Kaur, Bawa, Dr. P.S. Bakshi, Dr. Sabina Bakshi, Dr. Suresh K. Nanda and Dr. Daljitam Singh were placed on the record.

3. WE have heard the learned Counsel for the parties and perused the record with requisite care. Mr. G.S. Sachdev, Advocate for the opposite-parties has forcefully and frontly argued that the opposite-parties were not at all liable within the consumer jurisdiction because no consideration was charged or paid by the complainant and that only Rs. 100/- were charged for the X-ray and a receipt for the same was issued to the complainants. It was the submission that mere charging for X-ray and the payment thereof by the complainants would not bring them within the ambit of consumer. Primal reliance was placed on I (1992) CPJ 259 (NC) "Consumer Unity and Trust Society, Jaipur v. State of Rajasthan and Ors." There is no gain saying the fact that the observations in the aforesaid judgment go in aid of the opposite-parties.

Mr. A.S. Sukhija, Advocate for the complainant has strenuously urged that Bawa Hospital, Jalandhar is not a charitable Institution and that in fact the charges of the Hospital are quite exorbitant like any other private Nursing Home or Hospital. To buttress his arguments, Mr. Sukhija has drawn our attention to the averments made in paragraph 7 of the complaint wherein, it has been stated that "on the morning of 30.4.1993, an amount of Rs. 3500/- was got deposited as part payment of the operation fee and medicines and also referred us to the affidavits filed by Dr. Lakhmir Singh and the complainant S.S. Kahlon wherein they have averred that the payment agreed to be made was of Rs. 7,000/-, which included the night stay and preliminary checks up excluding the charges of medicines and that part payment of Rs. 3500/- was made on the morning of 30.4.1993 to the opposite-parties. Barring the complainant's own bald assertion in the complaint and the somewhat self-serving affidavits in support thereof, there is nothing else to establish that the complainants had paid the part payment of Rs. 3,500/- as operation fee to the opposite-parties. Indeed all the circumstantial testimony is to the contrary. The opposite parties have categorically denied to have demanded Rs. 7,000/- as charges for the operation and also denied to have accepted Rs. 3,500/- as part payment of the operation fee from the complainants on 30-4-1993. Their firm plea is that because of friendship with Dr. Lakhmir Singh, brother of Smt. Barindra Kahlon, deceased, no operation fee was

charged from the complainants and in support of this assertion, the opposite-parties had filed the affidavits of Smt. Gurdarshan Kaur Bawa and Dr. P.S. Bakshi, who had denied to have demanded Rs. 7,000/- as operation fee from the complainants. There is obvious merit in the stand of the opposite-parties and the submission aforesaid. S.S. Kahlon complainant and Dr. Lakhmir Singh have given different versions regarding the operation charges. In the affidavits filed by Dr. Lakhmir Singh and S.S. Kahlon complainant, their stand is that Rs. 7,000/- were demanded by the opposite-parties for the operation, inclusive of charges for a night stay in the hospital and preliminary checkings before the operation, whereas in the complaint, the complainants have stated that Rs. 7,000/- were the operation fee, excluding the expenses of medicines etc. Smt. Gurdarshan Kaur Bawa and Dr. P.S. Bakshi have plainly stated in their affidavits that whenever any fee is settled, the same is paid in advance and if the fee in part payment is received then proper receipt is issued to the patient and that no money is charged without issuing the receipt of the hospital. Sh. A.S. Sukhija has candidly conceded before us that no receipt for the amount of Rs. 3,500/- was obtained by the complainants from the hospital. When pinpointedly asked as to whom the part payment was made in the hospital, Sh. Sukhija had nothing to reply to this query. The complainants have further stated in paragraph-9 of the complaint that no further fee was charged from them. It is not unusual for a Doctor to treat a member of a family friend free of charge and it is the case of the opposite-parties herein that Dr. Lakhmir Singh, brother of the deceased was a family friend of late Dr. H.S. Bawa and his widow Smt. Gurdarshan Kaur Bawa rendered free service to the complainants. As there is not a title of evidence to show that any operation fee was charged by the opposite-parties from the complainants, we are unable to hold that they were the consumers who had hired services of the opposite-parties for consideration. Therefore, it follows that the services rendered by the opposite-parties were free of charge. If that is so, it will not be service within the meaning of Section 2(1)(o) of the Act. So they will not be "consumers" within the meaning of Section 2(1)(d) of the Act and hence, they are not entitled to maintain this complaint under the Act.

4. FOR the aforesaid reasons, the complaint is dismissed with no order as to costs. This order will, however, not preclude the complainants from seeking relief/reliefs by resorting to appropriate proceedings before any other FORum/Court, if it is permissible in law. Complaint dismissed.